

United States Postal Service and Los Angeles Bulk Mail Center Local, American Postal Workers Union, AFL-CIO. Case 21-CA-21812(P)

13 February 1984

DECISION AND ORDER

**BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER**

Upon an unfair labor practice charge filed on 9 December 1982, and amended on 18 January 1983, by Los Angeles Bulk Mail Center Local, American Postal Workers Union, AFL-CIO (herein also called the Union or the Charging Party), the General Counsel of the National Labor Relations Board, by the Regional Director for Region 21, issued a complaint 21 January 1983 against the United States Postal Service (herein also called the Respondent), alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the complaint and notice of hearing were served on the Respondent and the Charging Party. Thereafter, the Respondent filed a timely answer denying the commission of any unfair labor practices.

On 11 March 1983 American Postal Workers Union, AFL-CIO (herein also called the National Union or Party in Interest), filed a motion to intervene in these proceedings which was granted by the Regional Director for Region 21 on 15 March 1983.

On 20 April 1983 the parties jointly moved the Board to transfer the instant proceeding to the Board without benefit of a hearing before an administrative law judge, and submitted therewith a proposed record consisting of the formal papers and the parties' stipulation of facts with attached exhibits. On 29 June 1983 the Associate Executive Secretary of the Board, by direction of the Board, issued an order granting the motion, approving the stipulation, and transferring the proceeding to the Board. Thereafter, the General Counsel and the Respondent each filed briefs, and the Union and the National Union filed a joint brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record in the case, the Board makes the following findings.

I. JURISDICTION

The Respondent is engaged in providing postal service for the United States of America and operates various facilities throughout the United States

in the performance of that function, including its facility located at 5555 Bandini Boulevard, Bell, California, the only facility involved in this proceeding. The Board has jurisdiction over the Respondent and this matter by virtue of Section 1209 of the Postal Reorganization Act, 39 U.S.C. § 101 et seq. The Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

Los Angeles Bulk Mail Center Local, American Postal Workers Union, AFL-CIO, hereinafter the Union, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

American Postal Workers Union, AFL-CIO, hereinafter the National Union, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. The Issue

The issue presented is whether or not the Respondent's offer to the Union to enter into a grievance settlement, conditioned upon the affected employee's agreement to become a third signatory to the settlement and to waive his right to file an EEO complaint, violated Section 8(a)(5) and (1) of the Act. Based on the following facts, and for the reasons set forth below, we find that the Respondent's actions did not violate the Act.

B. The Stipulated Facts

Since at least July 1981, the National Union has been the designated exclusive collective-bargaining representative of the Respondent's employees in a unit of all postal clerks employed by the Respondent. The parties are signatory to a collective-bargaining agreement effective from 21 July 1981 through 20 July 1984. Under the contractual grievance procedure, either the Union or an individual employee can file a grievance at the first step, but only the Union has the right to appeal a grievance to the second step.

On 26 October 1982 bargaining unit employee Craig Walker received notice of a 14-calendar-day suspension from work without pay for alleged failure to maintain a regular work schedule. The suspension was to be effective 30 November 1982. The Union, on Walker's behalf, filed a grievance concerning the suspension 15 November 1982.

Walker's immediate supervisor denied the grievance at the first step on 15 November 1982. Union

Representative Caesar Lopez and the Respondent Labor Relations Officer George Manners then held a step 2 grievance meeting on 22 November 1982. In an effort to resolve the grievance, Manners presented to Lopez the following written offer of settlement:

The 14 calendar day suspension dated 10-26-82 issued to grievant for failure to maintain a regular work schedule AWOL will be reduced to a 7 calendar day suspension and he will receive back-pay for 5 working days provided:

1. For one year he will be regular in attendance except for substantiated absence acceptable to the supervisor.
2. He voluntarily agrees not to file an EEO complaint in this matter.
3. If he fails to comply with the terms of this agreement the 14 calendar day suspension stands.

This represents a total resolution of this grievance.

The offer also provided that, "The grievant will not exercise any other appeal rights relative to this matter."

The settlement offer, dated 22 November 1982, was signed by Manners and provided spaces for Union Representative Lopez' and Walker's signatures. It is undisputed that the offer of settlement required Walker's signature.

Lopez rejected the settlement offer because he did not believe the Union had the authority to waive Walker's rights to file an EEO complaint or to exercise other rights of appeal and because the settlement required Walker to become a party to the grievance resolution. When no agreement was reached, the grievance was denied at the second step. The record does not indicate whether the Union exercised its right to pursue the grievance to step 3.

C. Contentions of the Parties

The complaint alleges that the Respondent failed to bargain in good faith with the Union as the exclusive bargaining representative and violated Section 8(a)(5) and (1) of the Act by conditioning a grievance settlement on the affected employee's participation in the grievance resolution and requiring him to relinquish his rights to pursue EEO remedies.¹ The General Counsel, the Union, and

¹ Although the settlement offer clearly comprehended the grievant's waiver of all possible appeal rights, only the waiver of EEO rights is at issue here.

the National Union contend that the Union has exclusive jurisdiction over the grievance at the second step. As exclusive bargaining representative under Section 9(a) of the Act, it necessarily must pursue the best interests of all unit members. On the other hand, the EEO process pertains to purely individual concerns. Accordingly, they argue that the Respondent may not raise EEO settlement issues during grievance discussions because the interjection of separate and distinct individual interests interferes with and damages the Union's rights as Walker's exclusive bargaining representative.

The Union and National Union further argue that: requiring Walker to waive EEO rights impermissibly burdens employee access to EEO redress; permitting the Respondent to propose a grievance settlement which encompasses EEO issues and necessitates the employee's participation gives the employee veto power over the exclusive bargaining representative's right to resolve grievances; if the Respondent desired a waiver of employees' statutory remedial rights, it could bargain with the National Union for contractual relief; and the Respondent improperly raised EEO issues during the settlement discussions here because no EEO charge was pending.

The Respondent argues that it was attempting to further the Board's policy of voluntary settlements of labor disputes and noted that nothing in the National Labor Relations Act, Civil Rights Act, or Postal Reorganization Act prohibits encompassing in one settlement agreement conduct which could arguably violate any of the other applicable statutes. Additionally, the Respondent contends that the Act does not require it to settle grievances and that its mere offer to settle the grievance did not constitute bypassing or undermining the Union in violation of Section 8(a)(5) and (1). The Respondent further argues that its offer was not violative because the employee was free to reject the settlement and to pursue other remedies if he chose. Finally, the Respondent asserts that by requiring Walker to join in the settlement, it was attempting to inform him directly that any grievance settlement, in the Respondent's opinion, would indirectly have the effect of barring further EEO relief.

D. Discussion and Conclusions

An employer violates Section 8(a)(5) and (1) of the Act by adjusting an employee's grievance without permitting the collective-bargaining representative an opportunity to be present at such adjustment, as required by the second proviso to Section 9(a) of the Act.² In addition, an employer violates

² E.g., *Top Mfg. Co.*, 249 NLRB 424 (1980).

Section 8(a)(5) and (1) by other conduct which undermines a representative's statutory authority and derogates the collective-bargaining relationship. Such proscribed conduct may include attempts to bypass a union by negotiating directly with unit employees³ or repudiation of collective-bargaining agreement provisions negotiated on behalf of the unit employees.⁴

On the other hand, one of the fundamental policies of Federal labor law is the encouragement of private dispute resolution.⁵ Within the legal boundaries defined by Sections 9(a), 8(d), and 8(a)(5) of the Act, there is considerable latitude for parties to settle grievances.

In *Postal Service*, 234 NLRB 820 (1978), for instance, the Board held that the employer did not violate Section 8(a)(1) of the Act by conditioning reduction of an employee's discipline upon the employee's signed agreement not to grieve the discipline or to appeal it to government agencies, specifically including the EEOC.⁶ The settlement offer, which the employee accepted, was apparently made prior to step 2 of the contractual grievance procedure in accord with the National Union's contractual waiver of the right to participate. Accordingly, there was no contention that the settlement agreement interfered with the union's representational rights and violated Section 8(a)(5) and (1). Nevertheless, it is clear that an employer may lawfully propose a grievance settlement which requires an employee's signed waiver of appeal rights to the EEOC, or elsewhere, if the proposal accommodates a collective-bargaining representative's status under Section 9(a).

Here, the Respondent made its grievance settlement offer directly and only to the Union. By so doing, the Respondent complied both with its statutory and contractual obligation to recognize the Union's representative status with regard to the

grievance. Although Walker's signed assent was required before any settlement could be concluded, the Union's agreement was also essential. It remained in control, free to represent fairly both majority and individual interests.⁷ In fact, the Union could, and did, refuse even to submit the settlement proposal to Walker.⁸

Under the circumstances, we view the Respondent's settlement proposal to the Union as a means of achieving the lawful goal of avoiding future litigation about Walker's discipline while honoring the Union's status as exclusive collective-bargaining representative. Consequently, we find that the Respondent did not violate Section 8(a)(5) and (1) of the Act by conditioning a grievance settlement on Walker's becoming signatory to it and waiving his right to file an EEO complaint.

CONCLUSIONS OF LAW

1. The United States Postal Service is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Los Angeles Bulk Mail Center Local, American Postal Workers Union, AFL-CIO, and American Postal Workers Union, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

3. The Respondent, by offering to enter into a grievance settlement, with Los Angeles Bulk Mail Center Local, American Postal Workers Union, AFL-CIO, conditioned upon the affected employee's agreement to become signatory to the settlement and to waive his right to initiate and process EEO and other claims did not violate Section 8(a)(5) and (1) of the Act.

ORDER

The complaint is dismissed.

³ *J. I. Case Co. v. NLRB*, 321 U.S. 332 (1944).

⁴ *Oak Cliff-Golman Baking Co.*, 202 NLRB 614 (1973), 207 NLRB 1063 (1973), *enfd.* 505 F.2d 1302 (5th Cir. 1974), *cert. denied* 423 U.S. 826 (1975).

⁵ *Steelworkers v. American Mfg. Co.*, 363 U.S. 564 (1960); *Steelworkers v. Warrior & Gulf Co.*, 363 U.S. 574 (1960); *Steelworkers v. Enterprise Corp.*, 363 U.S. 593 (1960); and *Spielberg Mfg. Co.*, 112 NLRB 1080 (1955).

⁶ See also *Coca-Cola Bottling Co.*, 243 NLRB 501 (1979); *American Postal Workers*, 240 NLRB 409 (1979).

⁷ In the view of Chairman Dotson and Member Hunter, the decision here does not intimate that the Respondent would have been obligated to consult the Union about a proposed settlement of an EEO charge. Member Zimmerman finds it unnecessary to address factual situations and legal issues not presented in the instant case.

⁸ The Union contends that proposals such as the Respondent's could give an individual grievant a veto over settlements which the Union finds to be in the unit majority's interest. This may be, but the Respondent has no statutory duty either to settle a grievance or to propose settlements which are only in the majority's interest.